

§ 2.760a

sua sponte or the decision is subject to the provisions of § 2.764.

(b) Where the public interest so requires, the Commission may direct that the presiding officer certify the record to it without an initial decision, and may:

(1) Prepare its own decision which will become final unless the Commission grants a petition for reconsideration pursuant to § 2.771; or

(2) Omit an initial decision on a finding that due and timely execution of its functions imperatively and unavoidably so requires.

(c) An initial decision will be in writing and will be based on the whole record and supported by reliable, probative, and substantial evidence. The initial decision will include:

(1) Findings, conclusions and rulings, with the reasons or basis for them, on all material issues of fact, law, or discretion presented on the record;

(2) All facts officially noticed and relied on in making the decision;

(3) The appropriate ruling, order or denial of relief with the effective date;

(4) The time within which a petition for review of the decision may be filed, the time within which answers in support of or in opposition to a petition for review filed by another party may be filed and, in the case of an initial decision which may become final in accordance with paragraph (a) of this section, the date when it may become final.

[27 FR 377, Jan. 13, 1962, as amended at 31 FR 4339, Mar. 12, 1966; 35 FR 11459, July 17, 1970; 48 FR 52285, Nov. 17, 1983; 56 FR 29408, June 27, 1991]

§ 2.760a Initial decision in contested proceedings on applications for facility operating licenses.

In any initial decision in a contested proceeding on an application for an operating license for a production or utilization facility, the presiding officer shall make findings of fact and conclusions of law on the matters put into controversy by the parties to the proceeding and on matters which have been determined to be the issues in the proceeding by the Commission or the presiding officer. Matters not put into controversy by the parties will be examined and decided by the presiding of-

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ficer only where he or she determines that a serious safety, environmental, or common defense and security matter exists. Depending on the resolution of those matters, the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, after making the requisite findings, will issue, deny, or appropriately condition the license.

[44 FR 67088, Nov. 23, 1979]

§ 2.761 Expedited decisional procedure.

(a) The presiding officer may determine a proceeding by an order after the conclusion of a hearing without issuing an initial decision, when:

(1) All parties stipulate that the initial decision may be omitted and waive their rights to file a petition for review, to request oral argument, and to seek judicial review;

(2) No unresolved substantial issue of fact, law, or discretion remains, and the record clearly warrants granting the relief requested; and

(3) The presiding officer finds that dispensing with the issuance of the initial decision is in the public interest.

(b) An order entered pursuant to paragraph (a) of this section shall be subject to review by the Commission on its own motion within thirty (30) days after its date.

(c) An initial decision may be made effective immediately, subject to review by the Commission on its own motion within thirty (30) days after its date, except as otherwise provided in this chapter, when:

(1) All parties stipulate that the initial decision may be made effective immediately and waive their rights to file a petition for review, to request oral argument, and to seek judicial review;

(2) No unresolved substantial issue of fact, law, or discretion remains and the record clearly warrants granting the relief requested; and

(3) The presiding officer finds that it is in the public interest to make the initial decision effective immediately.

(d) The provisions of this section do not apply to an initial decision directing the issuance or amendment of a construction permit or construction

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authorization, or the issuance of an operating license or provisional operating authorization.

[27 FR 377, Jan. 13, 1962, as amended at 28 FR 7935, Aug. 3, 1963; 28 FR 10154, Sept. 17, 1963; 35 FR 5318, Mar. 31, 1970; 48 FR 52285, Nov. 17, 1983; 56 FR 29408, June 27, 1991]

§ 2.761a Separate hearings and decisions.

In a proceeding on an application for a construction permit for a utilization facility which is subject to § 51.20(b) of this chapter, and is of the type specified in § 51.21(b) (2) or (3) or § 50.22 of this chapter or is a testing facility, the presiding officer shall, unless the parties agree otherwise or the rights of any party would be prejudiced thereby, commence a hearing on issues covered by § 50.10(e)(2)(ii) and subpart A of part 51 of this chapter as soon as practicable after issuance of the staff of its final environmental impact statement, but no later than thirty (30) days after issuance of such statement, and complete such a hearing and issue an initial decision on such matters. Prehearing procedures regarding issues covered by subpart A of part 51 and § 51.10(e)(2)(ii) of this chapter, including any discovery and special prehearing conferences and prehearing conferences as provided in §§ 2.740, 2.740a, 2.740b, 2.741, 2.742, 2.751a, and 2.752, shall be scheduled accordingly. The provisions of §§ 2.754, 2.755, 2.760, 2.762, 2.763, and 2.764(a) shall apply to any proceeding conducted and any initial decision rendered in accordance with this section. Section 2.764(b) shall not apply to any partial initial decision rendered in accordance with this section. This section shall not preclude separate hearings and decisions on other particular issues.

[49 FR 9402, Mar. 12, 1984]

§ 2.763 Oral argument.

In its discretion the Commission may allow oral argument upon the request of a party made in a petition for review or brief on review, or upon its own initiative.

[56 FR 29408, June 27, 1991]

§ 2.764 Immediate effectiveness of initial decision directing issuance or amendment of construction permit or operating license.

(a) Except as provided in paragraphs (c) through (f) of this section, or as otherwise ordered by the Commission in special circumstances, an initial decision directing the issuance or amendment of a construction permit, a construction authorization, an operating license, or a license under 10 CFR part 72 to store spent fuel in an independent spent fuel storage installation (ISFSI) at a reactor site shall be effective immediately upon issuance unless the presiding officer finds that good cause has been shown by a party why the initial decision should not become immediately effective, subject to review thereof and further decision by the Commission upon petition for review filed by any party pursuant to § 2.786 or upon its own motion.

(b) Except as provided in paragraphs (c) through (f) of this section, or as otherwise ordered by the Commission in special circumstances, the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, notwithstanding the filing or granting of a petition for review, shall issue a construction permit, a construction authorization, an operating license, or a license under 10 CFR part 72 to store spent fuel in an independent spent fuel storage installation (ISFSI) at a reactor site, or amendments thereto, authorized by an initial decision, within ten (10) days from the date of issuance of the decision.

(c) An initial decision directing the issuance of an initial license for the construction and operation of an independent spent fuel storage installation (ISFSI) located at a site other than a reactor site or a monitored retrievable storage installation (MRS) under 10 CFR part 72 shall become effective only upon order of the Commission. The Director of Nuclear Material Safety and Safeguards shall not issue an initial license for the construction and operation of an independent spent fuel storage installation (ISFSI) located at a site other than a reactor site or a monitored retrievable storage installation